

REMARKS/ARGUMENTS

Claims 1-9, 13, and 24-33 remain in this application. Claims 10-12 and 14-23 have been canceled without prejudice. Claims 1-4 and 10 have been amended. Support for the amendment to claim 3 can be found on page 5, lines 29-30 of the specification and support for the amendment to claim 10 can be found on page 3, line 28 of the specification. Support for new claims 28-33 can be found on page 3, line 28 of the specification. Accordingly, no issues of new matter are believed to be raised by the above amendments to the claims.

REJECTION UNDER 35 USC 112, SECOND PARAGRAPH

Claims 1-13 were rejected under 35 USC 112, second paragraph. See page 2 of the Office Action. Applicants have amended claim 3 to no longer recite “polyoxyethylene ether” in order to clarify that the polyoxyethylene fatty ether recited in claim 9 is not the conditioning polymer, but rather is part of the lipid vesicle.

REJECTIONS UNDER 35 USC 102(b)

Claims 1, 4, 5, 8, and 13 were rejected under 35 USC 102(b) as being anticipated by Delrieu (U.S. Patent No. 5,968,015). See Page 3 of the Office Action. Applicants have amended claim 1 to recite that the “composition comprises polyvinylpyrrolidone encapsulated in a lipid vesicle. (emphasis added)” The ‘015 Patent does not recite such a composition. Accordingly, Applicants respectfully request that this rejection under 35 USC 102(b) be withdrawn.

II

Claims 1, 4, 5, and 8 were rejected under 35 USC 102(b) as being anticipated by the product brochure for Brookosome. See Pages 3-4 of the Office Action. As stated above, applicants have amended claim 1 to recite that the “composition comprises polyvinylpyrrolidone encapsulated in a lipid vesicle. (emphasis added)” The product

brochure for Brooksome does not recite such a composition. Accordingly, Applicants respectfully request that this rejection under 35 USC 102(b) be withdrawn.

III

Claims 1, 3, 5, 7 and 13 were rejected under 35 USC 102(b) as being anticipated by Yoshita (U.S. Patent No. 5,846,458). See Page 4 of the Office Action. As stated above, Applicants have amended claim 1 to recite that the “composition comprises polyvinylpyrrolidone encapsulated in a lipid vesicle. (emphasis added)” The ‘458 Patent does not recite such a composition. Accordingly, Applicants respectfully request that this rejection under 35 USC 102(b) be withdrawn.

IV

Claims 1, 3, 5, 7, 9, 11 and 13 were rejected under 35 USC 102(b) as being anticipated by WO 98/46208. See Page 4 of the Office Action. As stated above, Applicants have amended claim 1 to recite that the “composition comprises polyvinylpyrrolidone encapsulated in a lipid vesicle. (emphasis added)” The ‘208 Patent does not recite such a composition. In addition, the Office Action states that DNA “could be construed as a conditioning polymer.” Applicants, respectfully disagree. As set forth on page 3 of the specification, “what is meant by a “conditioning polymer” is a polymer that can effect one or more of the following attributes of hair: shine, volume, body, combability, style hold, and texture; or skin: moisturization, lubricity, increased healing, and texture.” The Office Action has not shown why it believes that DNA would have such attributes. Accordingly, Applicants respectfully request that this rejection under 35 USC 102(b) be withdrawn.

V

Claims 1, 5, 9, and 13 were rejected under 35 USC 102(b) as being anticipated by WO 96/31194. See Page 4 of the Office Action. As stated above, Applicants have amended claim 1 to recite that the “composition comprises polyvinylpyrrolidone encapsulated in a lipid vesicle. (emphasis added)” The ‘194 Patent does not recite such a composition.

Accordingly, Applicants respectfully request that this rejection under 35 USC 102(b) be withdrawn.

In addition, the Office Action states on Page 4 that cyclomethicone is a conditioning polymer. As set forth in new independent claim 24 , the conditioning polymer is a polymer having a molecular weight of at least 1,000. Such a composition is not taught, nor suggested, by the '194 Patent.

REJECTIONS UNDER 35 USC 103

Claims 2 and 6 were rejected under 35 USC 103 as being unpatentable over the '015 Patent, the product brochure for Brookosome, or the '628 Patent in view of Burke (U.S. Patent No. 5,562,912) or vice versa. See Pages 5-6 of the Office Action. According to the Office Action, "what is lacking in [the '015 Patent, the product brochure for Brookosome, or the '628 Patent] is the inclusion of polyvinylpyrrolidone in the formulation. Burke while disclosing skin cleanser compositions teaches that polyvinylpyrrolidone when included in the skin cleanser compositions, improves the foam character, after feel and rinsability The inclusion of polyvinylpyrrolidone in the liposome compositions . . . would have been obvious to one of ordinary skill in the art" See Page 6 of the Office Action. Applicants respectfully disagree.

As set forth in Example 8 of the specification (pages 41-44), Applicants unexpectedly found that formula 3 (which contained polyvinylpyrrolidone not in a liposome) showed fluorescence on the outside of the hair and much less inside the hair (as compared to the same formulations containing polyvinylpyrrolidone in a liposome). Example 3 (pages 43-44 of the specification) states "[a]fter three washings, most of the fluorescent signal was gone indicating that PVP alone, not encapsulated in liposomes, is not effective in retaining PVP on or in the hair fibers over several washings. By five washings, no fluorescent signal was present inside or outside the hair fibers, indicating no retention of PVP by the hair fibers." Accordingly, the inclusion of polyvinylpyrrolidone in the liposome compositions of the '015 Patent, the product brochure for Brookosome, or the '628 Patent would not have been obvious to one of ordinary skill in the art. Applicants, thus, respectfully request that this rejection under 35 USC 103 be withdrawn.

II

Claims 2, 6, and 10 were rejected under 35 USC 103 as being unpatentable over the ‘194 Patent in view of the ‘912 Patent or vice versa. See Pages 6-7 of the Office Action. According to the Office Action, “The inclusion of polyvinylpyrrolidone in the liposome compositions taught by [the ‘194 Patent] would have been obvious to one of ordinary skill in the art . . .” See Page 7 of the Office Action. Applicants respectfully disagree. As discussed above, Applicants unexpectedly found that the encapsulation of polyvinylpyrrolidone in a liposome was surprisingly effective in retaining polyvinylpyrrolidone on or in the hair fibers over several washings. Accordingly, the inclusion of polyvinylpyrrolidone in the liposome compositions taught by the ‘194 Patent would not have been obvious to one of ordinary skill in the art. Applicants, thus, respectfully request that this rejection under 35 USC 103 be withdrawn.

III

Claims 2, 6, 10, and 12 were rejected under 35 USC 103 as being unpatentable over the ‘015 Patent or the product brochure for Brookosome in view of the ‘194 Patent or vice versa. See Pages 7-8 of the Office Action. According to the Office Action, “What is lacking in the ‘015 Patent or the product brochure for Brookosome is the teaching of the use of niosomes . . . instead of lecithin. . . [The ‘194 Patent] suggests the use of above-mentioned niosomes containing glycerylestes . . . It would have been obvious to one of ordinary skill in the art to use niosomes of [the ‘194 Patent] for encapsulating the hyaluronate taught by [the ‘015 Patent or the product brochure for Brookosome] because of the disadvantages of lecithin liposomes taught by [the ‘015 Patent or the product brochure for Brookosome]” See Page 8 of the Office Action. Applicants respectfully disagree.

As discussed above, Applicants unexpectedly found that the encapsulation of polyvinylpyrrolidone in non-phospholipid liposome was surprisingly effective in retaining polyvinylpyrrolidone on or in the hair fibers over several washings. Accordingly, the inclusion of a conditioning polymer, such as a polymer of hyaluronic acid, in the liposome compositions taught by the ‘194 Patent would not have been obvious to one of ordinary skill

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in the art. Applicants, thus, respectfully request that this rejection under 35 USC 102(b) be withdrawn.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page(s) is/are captioned "Version with markings to show changes made".

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Please amend Claims 1-4 and 9 as follows:

1. (Amended) A composition for application to the hair or skin wherein said composition comprises a conditioning polymer polyvinylpyrrolidone encapsulated in a lipid vesicle.
2. (Amended) A composition of claim 10, wherein said conditioning polymer is a polyvinylpyrrolidone.
3. (Amended) A composition of claim 10, wherein said conditioning polymer is a polyoxyethylene ethersilicone polymer.
4. (Amended) A composition of claim 10, wherein said conditioning polymer is a polymer of hyaluronic acid.
9. (Amended) A composition of claim 5 for application to the hair or skin wherein said composition comprises a conditioning polymer having a molecular weight of at least 1000 encapsulated in a lipid vesicle, wherein said lipid vesicle comprises:
 - (a) a dual chain lipid which is a glyceryl diester, an alkoxylated amine, or a mixture thereof;
 - (b) a single chain lipid which is a glyceryl monoester, a polyoxyethylene fatty ether, or a mixture thereof;
 - (c) a sterol which is cholesterol; and
 - (d) a hydrophilic liquid which is water.

Please cancel claims 10-12 and 14-23, without prejudice.

Please add the following new claims

24. (New) A composition of claim 2, wherein said composition further comprises a detergent.
25. (New) A composition of claim 3, wherein said composition further comprises a detergent.
26. (New) A composition of claim 4, wherein said composition further comprises a detergent.
27. (New) A composition of claim 10, wherein said composition further comprises a detergent.
28. (New) A composition of claim 1, wherein said polyvinylpyrrolidone has a molecular weight of at least 1000.
29. (New) A composition of claim 1, wherein said polyvinylpyrrolidone has a molecular weight of at least 10,000.
30. (New) A composition of claim 2, wherein said conditioning polymer has a molecular weight of at least 10,000.
31. (New) A composition of claim 3, wherein said conditioning polymer has a molecular weight of at least 10,000.
32. (New) A composition of claim 4, wherein said conditioning polymer has a molecular weight of at least 10,000.
33. (New) A composition of claim 10, wherein said conditioning polymer has a molecular weight of at least 10,000.